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LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			ADAMS, GREGORY W	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,503

Applicant(s)

KLEMPNER, RONALD A.

Examiner

Gregory W. Adams

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 33-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. With respect to claims 33-46, Applicant is respectfully reminded that those claims are drawn to non-elected inventions II and III and should be labeled withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 7-8, 21-22, 24-26 & 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Harza (US 3,650,120).
4. With respect to claim 1, Harza discloses an apparatus 160 comprising a frame 164 including frame walls 164, removable container 22 and container removal means 76, 102, 104.
5. With respect to claim 2, Harza discloses a wall means 16 in direct contact with a container 22.
6. With respect to claim 7, Harza discloses a wall means 164 comprising angled wall 164.
7. With respect to claim 8, Harza discloses a frame 164 contains a frame upper end 164, and frame lower end 164, container upper end 22 and container lower end 22.
8. With respect to claim 21, Harza discloses a spill skirt 166, 168 at frame upper end.

Art Unit: 3652

9. With respect to claim 22, Harza discloses a spill skirt 166, 168 at frame upper end with a flexible bottom portion. It is noted that Harza discloses flexing via hinge portion, which allows spill skirt 168 to flex downward depending on weight of the trash passing over spill skirt 168.
10. With respect to claim 24, Harza discloses a spreader 104 for lifting a container 22 out of a frame 164.
11. With respect to claim 25, Harza discloses a spreader 104.
12. With respect to claim 26, Harza discloses a container upper end 22 includes lock means 88.
13. With respect to claim 30, Harza discloses a frame 164 is above ground level and frame ramp means 162.
14. With respect to claim 31, Harza discloses leveling means 12. It is noted that Harza discloses leveling material via compression prior to placement within container 22.
15. With respect to claim 32, Harza discloses material handler 102.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harza (US 3,650,120). Harza discloses a container but does not disclose 9 feet width,

Art Unit: 3652

12-½ feet height, 10-½ feet width, railroad dimensioning, or 2730 cubic volume. Harza teaches varying container size based on monthly or daily material accumulations, and also depending on a residential application or commercial application. Col. 6, Ins. 10-20. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Harza to include 9 feet width, 12 ½ feet height, 10 ½ feet width, railroad dimensioning, or 2730 cubic volume, as per the teachings of Harza, to accommodate monthly or daily material accumulations, and also to conform to a residential application or commercial application.

18. Claims 3 & 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harza (US 3,650,120) in view of Yamamoto (US 3,882,591). Harza discloses wall means but does not disclose movable wall. Yamamoto discloses a wall 13 comprising two movable walls 15. Yamamoto teaches actuating movable wall 15 to urge side and bottom frame walls 13 toward a container 4 in an amount to compensate for changes in container size brought on by temperature change. Col. 6, Ins. 26-65. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wall of Harza to include movable wall, as per the teachings of Yamamoto, such that side and bottom wall may compensate for changes in container size.

19. Claims 9, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harza (US 3,650,120) in view of Felts (US 3,472,399). Harza does not disclose tire stop means. Felts teaches an apparatus comprising a frame 15 including frame walls 14-21, removable container TT and container remover TT, and a tire stop 47 extending from a

Art Unit: 3652

spill skirt means top 19, 37 for stopping a reversing vehicle prior to dumping into a below ground removable container TT. Col. 1, Ins. 10-50. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Harza to include a tire stop, as per the teachings of Felts, such that stopping a reversing vehicle prior to dumping.

20. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harza (US 3,650,120) in view of Erickson et al. (US 4,946,068). Harza does not disclose a scale. Erickson et al. disclose a scale 40 disposed at said lower end of said frame 39 for safety improvement by electronically determining a weight of a loaded container 400 and corresponding delivery destination of a loaded container 400 prior to movement by a container removal means 58 from a frame 43, 45. Col. Ins. 1 through 40. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Harza to include a scale, as per the teachings of Erickson et al., to electronically determine a loaded container weight and destination for a loaded container prior to movement by a container removal means from a frame.

21. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harza (US 3,650,120) in view of Mirowsky et al. (US 6,372,131). Harza does not disclose a perforated pipe air plenum. Mirowski et al. disclose an air plenum 237 comprising perforated pipe at a frame upper end to run around a container 200, fan 229, and filter 231. Mirowsky et al. teach an air plenum for waste treatment systems having odor problems, and, more specifically to waste treatment systems which may be adaptable to closed covers. Col. 1, Ins. 6-62. Therefore, it would have been obvious to

Art Unit: 3652

one having ordinary skill in the art at the time the invention was made to modify the apparatus of Harza to include an air plenum, fan and filter, as per the teachings of Mirowsky, to treat odor problems during waste treatment.

22. Claims 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harza (US 3,650,120) in view of Teeny (US 5,110,055). Harza does not disclose a leachate system. Teeny discloses a leachate system 58, 26, 32 at frame lower end 44 for conducting contaminated waste product from a container wherein the contaminate may be further cleaned and/or disposed. Col. 4, Ins. 60-69. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Harza to include a leachate system, as per the teachings of Teeny, for conducting contaminated waste product from a container wherein the contaminate may be further cleaned and/or disposed.

23. Claims 4-6 & 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harza (US 3,650,120) and Yamamoto (US 3,882,591) in view of Everard et al. (US 5,142, 717).

With respect to claims 4 & 28, Harza discloses a spacer but does not disclose a spacer which having a space such that the space between a container and wall is filled with a spacer, i.e. completely fills a space. Everard et al. disclose an inflatable air bladder 10 to support a load and maintain chamber air pressure at a constant preset level when the load is applied thereto. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Harza to include inflatable air bladder, as per the teachings of Everard et

Art Unit: 3652

al., to support an external load and maintain the air pressure within a chamber at a relatively constant preset level when the load is applied thereto.

With respect to claim 5, Harza discloses a spacer below a container bottom.

With respect to claim 6, Harza discloses a spacer disposed between a container 22 and frame 164.

24. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harza (US 3,650,120) in view of Nijenhuis (US 4,832,561). Harza discloses a spill skirt 166, 168 and a spill skirt hinge, but does not disclose a spill skirt on three sides. Nijenhuis discloses a spill skirt 5, 14, 17, 30 along at least three sides, overlapping a fill opening, "thus avoiding the possibility of trash falling over the edge of the silo opening." Col. 2, lns. 23-39. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spill skirt of Harza to include a spill skirt on three sides, as per the teachings of Nijenhuis, to prevent trash from missing the silo opening and falling over the edge.

Response to Arguments

Applicant's arguments filed September 22, 2005 have been fully considered but they are not persuasive.

Applicant is respectfully reminded that a recitation of the intended use of or problem solved by the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If Applicant wishes to have secondary consideration considered, affidavits are the proper format not attorney arguments. If the prior art

Art Unit: 3652

structure is capable of performing the intended use, then it meets the claim. For example, ramps and spill skirts for a particular type of dumping, e.g. small-building or large volume vehicles, recites an intended use. In this case, Harza's removable container could certainly be dumped into if a truck were to back up to it and tilt its load bed.

With respect to claims 1-2, 4-8, 21-22, 24-2 & 30-32 Applicant's argument that Harza is directed to single-building waste handling is a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Further, the fact that Harza may or may not be the same size as Applicant's is a factor afforded little patentable weight. Applicant also argues that Harza does not disclose emptying substantially into a container upper end. The term "substantially" refers to something less than the whole which Harza discloses. The claims fail to set forth any structure that would overcome Harza. The intended use and functional language do not add any patentable weight to the claim. Harza is capable of performing the functional limitations of the claims.

With respect to claim 2, Harza's container 22 comprises a lid 168 which touches a sidewall 164 which, although slight, equates to contact as claimed.

With respect to claim 4, occupying a space between a container and wall comprises the space occupied by a spacer. Further, as mentioned above, substantially

Art Unit: 3652

means something less than whole. As noted above, the placement of an air bladder as a spacer would completely fill a space.

With respect to claim 7, Harza discloses a 90-degree wall as measured from a bottom side/wall, which conforms to container 22 that has a similar 90-degree angle.

With respect to claim 21, the fact that Applicant intends a spill skirt for use by trucks does not establish a distinction over the prior art, and does not preclude the use of Harza's spill skirt which defines a spill skirt. However, regardless of the use Harza depicts a spill skirt, for presumably directing waste into a container which reads on claim 21.

With respect to claim 30, Applicant argues that a ramp allows a truck to drive to a frame for unloading waste. With respect to the Specification page 11, para. [0048] Applicant defines a ramp as leading to either an above ground framed container or below ground framed container. While limitations are not to be read from the Specification, Harza discloses an underground framed container having a ramp defined by the surrounding ground surface. Harza's ramp, although flat, reads on claim 30 as currently written.

With respect to claim 32, Harza discloses a material handler, i.e. crane and truck, which removes waste by hoisting a container and placing on a truck for transport to another container, or central collection facility. Harza does not disclose a mechanism for removal of waste from inside a container, e.g. grabber, hook, bucket or claw, and this is not a limitation defined by claim 32.

It is assumed that Applicant is referring to claims 10-14 instead of claims 1-14 when discussing the 103 rejections. Thus, with respect to claims 10-14, the differences in environment, i.e. single-building v. large metropolitan, are afforded little patentable weight. Dimensions without a showing of novelty over the prior art and how others had tried to use these containers and failed. However, even with a showing Harza would read on a particular dimension given its teaching that a container size could be changed to accommodate a particular size and volume of material.

With respect to claims 3 & 27, In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Yamamoto merely teaches a movable wall 13 under pressure by jacks 15 as shown in FIG. 15. Yamamoto teaches the addition of movable walls to accommodated changing container conditions. Harza's handling waste in a removable container qualifies as a reason for modifying Harza. Merely because Yamamoto teaches additional structure does not mean its teaching cannot be used.

With respect to claims 9, 15-19 & 23, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a

Art Unit: 3652

reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to claims 9 & 23 Applicant further argues that there is no reason to combine Felts tire stop with Harza. As noted under 103(a) rejections above, the teaching for combining is found in Col. 1, Ins. 10-50. Harza's recessed frame is combined with Felt's tire stop to inhibit vehicle motion at which point a vehicle can dump trash material into a recessed frame together provide vehicle dumping into a recessed frame and container. As both Harza and Felts treat trash they are at least analogous and combinable.

With respect to claim 15 Applicant argues that Harza in combination with Erickson does not disclose a container and scale. As noted above under 103(a) rejections, both Harza and Erickson are in the container art. Further, both Harza and Erickson both concern with moving materials within said containers. For at least these reasons Harza and Erickson are analogous and combinable. Further, Erickson's scale is offered as modifying Harza's apparatus such that a desired weight reading to determine whether the containers are full or empty which is a factor in determining the next step in a containers transport. By comparison, Applicant's claim 15 recites a scale in a frame with any structure that defines over the cited prior art. For at least theses reasons, Applicant has not overcome the rejection of claim 15.

Art Unit: 3652

Also, with respect to claims 16-19, Applicant argues that Harza's treatment of frozen waste precludes any use of an air plenum, perforated pipe, and filter. However, it is not Harza that is offered for this proposition, but Mirowsky. Mirowsky evacuating odor from waste handling in a closed system. Harza qualifies as a waste handling. Although Harza discloses freezing waste to eliminate waste, there may be other waste within the frame to be evacuated per Mirowsky. For example, waste may fall between the container and wall creating an odor Mirowsky would evacuate.

With respect to claim 20, merely because a primary reference discloses handling a particular style of waste does not preclude a modifying reference from teaching the addition. Again, the mere fact that Harza handles frozen waste does not the modification to add a leachate system as taught by Teeny. Teeny teaches adding a leachate system to remove waste and Harza teaches removal of waste. It is noted that leachate comprises a "solution or product obtained by leaching <toxic leachates from improperly managed landfills." www.dictionary.com. Thus, a leachate system is one that removes solution. Broadly construed, Harza's frame could absorb a solution or product.

With respect to claim 28 and 29, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed.

Art Unit: 3652

Cir. 1992). In this case, Everard teaches an inflatable air bladder provides constant pressure which is an improvement over Harza's static wall, and Nijenhuis is offered for the proposition of adding a spill skirt to three sides to a trash container apparatus. Although Harza depicts small amounts of waste, it also discloses the idea of a removable container, and Applicant is respectfully reminded that changing size is afforded little patentable weight.

Conclusion

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30-6.

Art Unit: 3652

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GWA



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